

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

:::

JUDGMENT

Ashar Ahmed

vs.

Smt. Sita Devi & another.

S.B.CIVIL SECOND APPEAL NO.283/2004
UNDER SECTION 100 CPC AGAINST THE
JUDGMENT AND DECREE DATED 29.5.2004
PASSED BY SHRI OM PRAKASH AGARWAL,
ADDITIONAL DISTRICT JUDGE NO.1,
CHITTORGARH IN CIVIL APPEAL
NO.111/2003.

DATE OF JUDGMENT :: 3.5.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. KK Shah, for the appellant.

Mr. SN Trivedi, for the respondents.

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BY THE COURT:

Heard learned counsel for the parties.

The plaintiff filed a suit for eviction of the
appellant/tenant on the ground of personal bonafide
necessity, default in payment of rent, subletting and

creating nuisance by the tenant. The trial court decreed the suit of the plaintiff on the ground of subletting after holding that the defendant committed first default. The trial court also held that the appellant has created nuisance in the premises. The finding of fact recorded by the trial court in its judgment and decree dated 13.11.2003 was upheld by the first appellate court vide judgment and decree dated 29.5.2004.

Learned counsel for the appellant vehemently submitted that the appellant deposited the rent of the premises in dispute from 1.3.1987 to 31.5.1988 in the Court, still the trial court has decided the issue no.2 against the appellant. It is also submitted that the appellant proved from evidence that Bheru Singh was servant in the shop of appellant and thereby the appellant has not sublet the suit premises. Learned counsel for the appellant relied on the judgments delivered in the cases of (1) Shri Dipak Banerjee vs. Smt. Lilabati Chakraborty reported in All India Rent Control Journal XI - 1987(2) 644 and (2) Jodhraj vs. Suleman reported in RLW 1970 P.170 wherein, according to learned counsel for the appellant, it has been laid down that for proving the fact of subletting, the landlord is required to prove the actual parting of the premises. In this case, in view of the statement of the appellant's witness Bheru Singh, it is clear that the appellant/tenant never parted with possession of the premises and handed over exclusively possession of the premises to the alleged sub-tenant.

I have considered the submissions of learned counsel for the appellant and perused the reasons given by two courts below and so also, perused the two judgments.

Two courts below concurrently held that Bheru Singh stated that he was in occupation of the suit shop and he was working as servant in cycle repairing shop whereas the tenant-in-chief stated that he has no cycle repairing shop. Not only this, two courts below have considered the evidence of both the parties. The plaintiff fully proved the fact of subletting by the tenant to sublet. In view of the statement of Bheru Singh also, the case of the plaintiff was fully proved. In view of the above, the courts below have not committed any error of law in deciding the issue of subletting.

So far as creating of nuisance is concerned, that is a finding of fact recorded by two courts below by appreciation of evidence.

In view of the above, I do not find that any substantial question of law arise in this appeal. Accordingly, this appeal having no merit, is hereby dismissed.

S. Phophaliya

(PRAKASH TATIA), J.